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No. 96-65

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In The

SUPREME COURT OF THE UNITED STATES

October Term, 1996

GRUMMAN TECHNICAL SERVICES, INC. ET AL
PETITIONERS

V.

ESTATE OF LAMAR ISHEE, ET AL
RESPONDENTS

RESPONSE IN SUPPORT OF PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE FIFTH CIRCUIT

RESPONSE IN SUPPORT OF PETITION FOR A WRIT OF CERTIORARI

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JERRY FOX AND BENNY REVELS

11 pp

PARTIES TO THE PROCEEDING

In addition to Respondents, UNC Aviation Services, Inc., Jerry Fox and Benny Revels, the following is a listing of parties to the proceedings in the United Court of Appeals for the Fifth Circuit:

Grumman Technical Services, Inc.
The Estate of Lamar Ishee
McDonnell Douglas Corporation
Jerome A. Kuechmann
Thomas Harden
Edwin E. Gennette
Mark Glasgow
David Callaghan
Grover Miley
Angela N. Ishee, individually and on behalf of Caitlin S. Ishee, a minor child

TABLE OF CONTENTS

Parties to the Proceeding i

Table of Contents ii

Table of Authorities iii

Opinions Below 1

Jurisdiction 2

Statutory Provisions Involved 2

Statement of the Case 2

A. Factual Background 2-3

B. Proceedings Below 3

Reasons for Granting the Petition 4

Conclusion 4

TABLE OF AUTHORITIES

Page

28 U.S.C. §1254(1) 2

28 U.S.C. §1442(a) 4

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October Term, 1996

No. _____

GRUMMAN TECHNICAL SERVICES, INC. ET AL
PETITIONERS

V.

ESTATE OF LAMAR ISHEE, ET AL
RESPONDENTS

UNC Aviation Services, Inc., Jerry Fox and Benny Revels make their response in support of the petition for a writ of certiorari filed by Grumman Technical Services, Inc. to review the judgment of the United States Court of Appeals for the Fifth Circuit in this case.

OPINIONS BELOW

Opinions and orders of the United States Court of Appeals for the Fifth Circuit and opinions of the United States District Court for the Southern District of Mississippi referenced in the petition for a writ of certiorari filed by Grumman Technical Services, Inc. (referenced in the appendix of the petition filed by Grumman

Technical Services, Inc.).

JURISDICTION

UNC Aviation Services, Inc., Jerry Fox and Benny Revels make this response in support of the petition for a writ of certiorari from the judgment of the United States Court of Appeals for the Fifth Circuit, entered April 12, 1996. The jurisdiction of this court is invoked under 28 U.S.C. §1254(1) and this response is filed pursuant to Rule 12, Supreme Court Rules.

STATUTORY PROVISIONS INVOLVED

Respondents, UNC Aviation Services, Inc., Jerry Fox and Benny Revels agree with the statutory provisions cited in the petition for a writ of certiorari of Grumman Technical Services, Inc.

STATEMENT OF THE CASE

A. Factual Background

Respondents, UNC Aviation Services, Inc., Jerry Fox and Benny Revels agree generally with the factual background presented in the petition for a writ of certiorari filed by Grumman

Technical Services, Inc. as well as the recitation of the proceedings below. Respondents provide the following additional factual background for a more complete presentation of their position.

UNC Aviation Services, Inc. provided intermediate-level maintenance on the subject TA-4J aircraft which included performance of work on the aircraft/support equipment and structural components not on the aircraft. Contractual agreements between UNC Aviation Services, Inc. and the United States set forth the scope of work performed and services provided by UNC Aviation Services, Inc. Further, UNC Aviation Services, Inc. and its personnel were subject not only to the specific provisions of contractual agreements, but also work was governed by the various manuals and other governmental instructions and directives as referenced by Grumman Technical Services, Inc. in its petition.

Respondents, UNC Aviation Services, Inc.,

Jerry Fox and Benny Revels were, as stated by Grumman Technical Services, Inc., "substitute sailors" (page 3, Grumman petition). Also, while not dispositive of issues in the court below, the only evidence before the court concerning the packing or repacking of the parachute provided to Captain Ishee, were parachute records and history records, positively showing that no one affiliated with UNC Aviation Services, Inc. had any contact with the parachute or ejection seat system prior to the accident in question.

B. Proceedings Below

UNC Aviation Services, Inc., Jerry Fox and Benny Revels agree with the statement of proceedings below set forth in the petition for a writ of certiorari filed by Grumman Technical Services, Inc. except to note that these parties joined in and/or participated in the response to the motion to remand, appeals and all reconsiderations thereof.

REASONS FOR GRANTING THE PETITION

To avoid unnecessary duplication, UNC Aviation Services, Inc. Jerry Fox and Benny Revels respond, stating their agreement with the reasons set forth by Grumman Technical Services, Inc. for the granting of the petition, more particularly enumerated in Sections I and II of the petition for writ of certiorari.

These respondents would, however, reaffirm to the court their response in support of the petition to further state that not only was the removal on their part appropriate, but that the denial of removal under 28 U.S.C. §1442(a) greatly limited the application of the government contract of defense, and inappropriately excluded this federal contractor and personnel from federal court. The need for relief in this court for UNC Aviation Services, Inc., Jerry Fox and Benny Revels is all the more heightened in view of the fact that naval personnel and/or others than these parties were affiliated with the performance or non-

performance of services which are/were attributed to these parties.

CONCLUSION

Respondents, UNC Aviation Services, Inc., Jerry Fox and Benny Revels hereby request that the petition for a writ of certiorari be granted and that they be afforded all such relief as may be appropriate and proper under the circumstances.

Respectfully submitted,

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Dated: July 24, 1996.